Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

HELEN STACEY

Petitioner

v.

CITY OF HERMITAGE and
CITY OF HERMITAGE BOARD OF APPEALS

Respondents

On Petition for a Writ of Certiorari to the
Commonwealth Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

HELEN STACEY
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45 pp

QUESTIONS PRESENTED

Did the City's entry onto Petitioner's property without consent to search and to ultimately seize and demolish her home without a specific warrant or other judicial process by the City, violate the prohibition against unreasonable searches and seizures in the Fourth Amendment and the prohibition against causing deprivations of property without due process in the Fourteenth Amendment?

Did the trial judge and the lower court clerk, who unlawfully altered Petitioner's notice of appeal, deny Petitioner due process in violation of the Fourteenth Amendment by refusing to process the notice of appeal as required by the Pennsylvania Rules of Appellate Procedure?

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OPINIONS BELOW

The opinion and order of the Commonwealth Court of Pennsylvania is reported at 789 A.2d 772 (2001) and reproduced in Appendix A hereto. The order denying reconsideration is reproduced in Appendix B. The order of the Pennsylvania Supreme Court denying the petition for allowance of appeal is reported at 806 A2d 865 (Pa. 2002) and reproduced in Appendix C. The order denying reconsideration is reproduced in Appendix D.

JURISDICTION

The order of the Commonwealth Court of Pennsylvania was entered November 8, 2001, and rehearing was denied and entered January 29, 2002. A timely petition for hearing before the Pennsylvania Supreme Court was filed on February 28, 2002, and denied July 10, 2002. A petition for reconsideration there was denied September 24, 2002.

The jurisdiction of the United States Supreme Court to review the decision below is conferred by Title 28,United States Code, Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides in part:

> . . . No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction of equal protection of the laws.

Sections PM-105.3, PM-110.0 and PM-111.1 of the City of Hermitage Property Maintenance Code are reproduced in Appendix E.

Rules 902, 905 and 1925 of the Pennsylvania Rules of Appellate Procedure are reproduced in Appendix F.

STATEMENT OF THE CASE

Petitioner Helen Stacey, now 93, lived with her husband in the family home for over 50 years in Hermitage, Pennsylvania. Their home was a large brick commercial building, one of the first along the City's main drag. The Staceys ran a mom-and-pop grocery store, service station and restaurant. The building had no front or side yard setbacks and became a non-conforming eyesore under the City's later zoning laws.

Mr. Stacey was an auto mechanic and stored vehicles for parts in the back yard. Over the years, the City cited him for violating its junk car ordinance.

In 1997, after a heavy rain from City streets flooded the cellar, the City quickly evicted the elderly couple from their home, the City seeing an opportunity to get rid of the nonconforming structure. The City cited the Staceys for violating the municipal building code, alleging the structure was in danger of collapse and uninhabitable. Mr. Stacey died a few months later at 92.

The City then boarded the building up and padlocked the doors. An administrative hearing was held on the condition of the home, and the volunteer citizen board found the property to be a public nuisance because of rain damage to the foundation. Mrs. Stacey had no opportunity to present her engineer who was involved in Easter ceremonies when the hearing was held.

Mrs. Stacey appealed the decision, the county court affirmed, but the City failed to show the necessity of demolishing the building while other less drastic alternatives existed. Mrs. Stacey hired a contractor to begin repairs, and a potential buyer was willing to complete repairs the City could work with.

The City gave Mrs. Stacey thirty days to repair or demolish. They did not warn her if repairs were not done the City would demolish the building. They did not advise her of the right to appeal that decision. See Property code sections in Appendix E.

Mrs. Stacey did not meet the deadline because her contractor was overwhelmed with other work. She asked for an extension which the City declined. Her contractor completed some repairs within the week, but the City had already put out bids to demolish the home.

A month later, Mrs. Stacey's son came to the homesite with an engineer to inspect the work that had already been done. They came upon a group of City cars surrounding the building and discovered City personnel inside the home after they had shattered glass in the front door and jimmied the lock. They left when Stacey's son order them out for trespassing and called the State police who failed to show up.

Standing inside the entrance, the son yelled out to the City inspector that he could not come in without a warrant. The inspector indicated he had none. Then the

police chief in plainclothes grabbed the son through the doorway, dragged him outside and threatened arrest for interfering. For the next two months, the City went in and out of the Stacey home without a warrant or other judicial process. They inspected and collected evidence against Stacey and removed private property in violation of the City's own law and the state's Crimes Code. All the while, they refused to let Stacey's engineer do an inspection.

Mrs. Stacey petitioned the Pennsylvania Mercer County Court of Common Pleas for an injunction to stop the City from destroying her home. Judge Thomas Dobson granted a temporary injunction but vacated it after a hearing where Mrs. Stacey was denied a fair opportunity to present expert testimony or evidence.

Mrs. Stacey urged her attorney, Jerry Cartwright of New Castle, Pennsylvania, to file an immediate notice of appeal. And he did on September 7, 2000. But the court failed to process it as required by Rules 902, 905 and 1925 of the Pennsylvania Rules of Appellate Procedure (APPENDIX F). The court clerk received the notice for filing and time-stamped it but refused to enter it on the docket. Instead she altered it by using "white out" and obliterated the time-stamp and a notation that a filing fee was paid, all in violation of Pennsylvania Crimes Code §§ 4910 and 4911 by tampering with public records (APPENDIX G). In concert with the clerk, Judge Dobson prevented the processing of Mrs. Stacey's notice of appeal when he denied her motion for an appellate stay, telling the clerk

his order dissolving the injunction was interlocutory and could not be appealed . The judge's advice contradicted Rule 311(a)(4)(ii) of Pennsylvania Appellate Procedure, which allows appeals as of right from a decree nisi that "dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi" (APPENDIX F).

This made it easy for the City to demolish Mrs. Stacey's home with no protective stay pending appellate review, despite the fact she had a $50,000 bond in place holding the City harmless. What made it easier was the fact that Atty. Cartwright failed to show up for the final hearing on November 6, 2000. When the final order was entered on the docket neither Judge Dobson nor the court clerk made any effort to process Mrs. Stacey's notice of appeal as mandated by Pa.Rule.A.P. 905:

> Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date. . .which date shall be shown on the docket. . . . A notice of appeal filed . . . before the entry of an appealable order shall be treated as filed after such entry and on the day thereof . . . . The clerk shall immediately transmit to . . . the appellate court . . . a copy of the notice of appeal showing the date of receipt . . . .

At the final hearing on November 6, Judge Dobson had communications with City attorney H. William White III, outside the presence of Mrs. Stacey or her attorney. Atty. White knew she wanted to appeal and she needed

a stay to stop him and the City. Within minutes after the end of the hearing, Atty. White had the clerk enter the final order, and within hours, he and the City through sharp practices had Mrs. Stacey's home and all her belongings of over 50 years on the ground like dust in the rubble. A lifetime of blood, sweat and tears went into the family home for Helen Stacey.

Without first obtaining a warrant or other judicial process, the City seized the Stacey property with destructive force by entering the family home and demolishing it and all its contents with heavy equipment. Among the family items destroyed were private papers, tax returns, books, original artwork, collectibles and family photos—a building and an accumulation of over 50 years, now impossible to inventory or inspect or cherish, and no longer available for further judicial proceedings. Pennsylvania Crimes Code § 4910 provides criminal sanctions for destruction of evidence with intent to impair its availability for a pending official proceeding (APPENDIX G).

The City assessed Mrs. Stacey over $13,000 for costs in demolishing her home and placed a lien on the property. The City did not provide Mrs. Stacey with an opportunity to contest the assessed costs of the lien, even though she applied for a board hearing on the demolition. The City refused her a hearing provided for in the City Property Maintenance Code, Sections PM-110.4 and PM-111.1 (APPENDIX E). Again the City failed to adhere to its own ordinance and procedures.

At no time did the City ask Mrs. Stacey's permission nor notify her so she could be present to protect her property. At no time did the City obtain warrants or have written complaints for any of these entries to search and seize her home. No emergency required the immediate removal of the building. It was boarded up and secure from unauthorized entry and was not a hazard. The City introduced no evidence on cost estimates to repair.

There was ample time between August and November 6, 2000, for the City to obtain a specific warrant. Under the City's Property Maintenance Code, Sections PM-105.3 and PM-110.3 authorize City employees to enter for search and seizure and demolition, but Section PM-105.3, requires the City to obtain a judicial warrant or other judicial authorization for entry (APPENDIX E). Section PM-106 makes it a criminal act to resist or oppose any provision of the Code. Probable cause is not necessary to enter any structure in the sole subjective opinion of the code official.

The Constitutional issues were raised in the lower court in a statement of matters complained and at trial. They were also raised on appeal in Petitioner's briefs and applications and also by Petitioner's son in an amicus curiae brief on appeal to the Pennsylvania Commonwealth Court and Supreme Court, who decided against Mrs. Stacey. APPENDIX A thru D.

The trial court and Commonwealth Court expressly found it was proper for the City to seize and demolish Mrs. Stacey's home without a specific warrant or other judicial process. The Commonwealth Court held that she was afforded due process throughout the proceedings and availed herself of the legal avenues available to her. She raise the Constitutional issues in her petition to the Pennsylvania Supreme Court which was denied even though there were issues of violation of the high court's own Rules of Appellate Procedure by the trial court's failure to process her "first" notice of appeal and alteration of the notice in violation of the Pennsylvania Crimes Code.

REASONS FOR GRANTING PETITION SUBSTANTIAL QUESTIONS OF PUBLIC IMPORTANCE.

The decisions below allowing the destruction of private homes by public officials without specific warrant, judicial process or emergency, sanction the unreasonable searches and seizure of homes, in violation of the Fourth and Fourteenth Amendments. Certainly this raises substantial questions of great public importance.

For example, almost 2000 residential and family structures were demolished over a recent five year period in the Dallas area of Texas. Take that figure times, how many more places throughout the nation where homes are demolished, and the total would be a

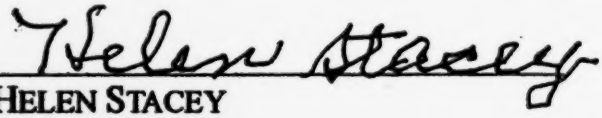
significant number of demolitions. If a fraction of the total represents a predicament like Mrs. Stacey's with total destruction of almost everything she ever owned, worked and lived for, then this case is extremely vital to the country because the Court rarely hears cases like this for lack of plaintiff expertise and resources of time and money. Probably most if not all the social victims in a demolition predicament are poor. Certainly this raises substantial issues of great public importance.

The Fourth Amendment provides the only means by which the government can invade a person's home, that is, thru a search warrant, excepting emergency situations. *Camara v. Municipal Court*, 387 U.S. 523 (1967).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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December 23, 2002

APPENDIX A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Helen Stacey
v. No. 2734 C.D. 2000

City of Hermitage Board of Appeals

Helen Stacey
v. Argued: October 9, 2001

City of Hermitage and City of
Hermitage Board of Appeals

Appeal of: Helen Stacey

BEFORE: HONORABLE DAN PELLEGRINI, JUDGE
HONORABLE BONNIE BRIGANCE LEADBETTER, JUDGE (P.)
HONORABLE JESS S. JIULIANTE, SENIOR JUDGE

OPINION BY
SENIOR JUDGE JIULIANTE FILED: November 8, 2001

Helen Stacey (Stacey) appeals from the November 6, 2000 order of the Court of Common Pleas of Mercer County (trial court) that denied her request for a permanent injunction. Stacey sought to enjoin the City of Hermitage (City) from demolishing her former residence at 1560 East State Street, Hermitage. We affirm.[1]

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[1] On review, we are limited to determining whether the trial court abused its discretion or committed an error of law.

APPENDIX A

In 1997, the City informed Stacey that her property was in violation of the City's property maintenance code and that, therefore, it was proceeding to have Her property declared a public nuisance. In 1998, the City adopted a new property maintenance code, which mirrors the Building Officials and Code Administrators National Property Maintenance Code (BOCA Code). Consequently, the City notified Stacey that her property was in violation of the BOCA Code and that any corrective action had to be completed within thirty days.

Stacey appealed to the City of Hermitage Board of Appeals (Board). The Board held a hearing on April 15, 1999 and, upon conclusion, determined that Stacey's structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth, a fire hazard and in danger of collapse.

Stacey appealed. By order dated April 19, 2000, the trial court affirmed the Board's determination in all respects except one. It reversed the Board's determination that Stacey's property constituted a fire hazard. No appeal was taken from that order.

Thereafter, the City began proceedings to have the structure demolished. On June 1, 2000, the City informed Stacey that she had the right to cure the

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Licensed Beverage Ass 'n of Philadelphia v. Bd. of Educ. of the Sch. Dist. of Philadelphia, 669 A.2d 447 (Pa. Cmwlth. 1995).

structure's problems within thirty days and that if she failed to do so, demolition would follow. On June 30, 2000, Stacey's son, Raymond, requested an extension of time in which to complete the repairs. By that time, Raymond had distributed two loads of sand into the basement.[2] The City denied Raymond's request for an extension of time.

On August 30, 2000, Stacey filed a petition for special relief in the nature of a temporary injunction against the Board and the City. In her petition, Stacey alleged that she was arbitrarily denied a hearing before the Board on the issue of demolition, that she was not notified of her right to appeal the City's decision to demolish her residence, and that the structure had value and could be restored. [3]

The trial court issued an order granting the temporary injunction and set a permanent injunction hearing for September 5, 2000. At the conclusion of the hearing, the trial court determined that 1) it was bound by its April 19, 2000 order concluding that the structure was unsafe, 2) it would be unreasonable to repair the structure where it would have to be taken down to the studs and 3), Stacey was not entitled to a hearing before the Board because no timely appeal was filed.

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[2] Previous flooding caused the basement to cave.

[3] On August 31, 2000, Stacey executed a durable power of attorney naming Raymond as her legal representative. Raymond is participating in this appeal as amicus curiae.

Accordingly, the trial court entered a decree nisi vacating the temporary injunction.

Stacey took exceptions to the decree nisi. On November 6, 2000, the trial court entered an order affirming its prior decree. The following day, November 7, 2000, the City demolished the structure. This appeal followed.

Section 110.1 of the BOCA Code provides that

> [t]he code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to raze and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to raze and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to raze and remove such structure.

(Reproduced Record "R.R." 28a) (emphasis deleted).

Stacey cannot now argue that the Board erred in concluding that her structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or

garbage and uncontrolled weed growth and in danger of collapse. The April 19, 2000 trial court order affirmed the Board's determination and no appeal was taken. Stacey's failure to appeal the trial court's order precludes her from challenging that determination in this proceeding. See generally *First Nat 'l Bank v. Commonwealth*, 520 Pa. 244, 553 A.2d 937 (1989) (Commonwealth's failure to appeal tax resettlement order precluded consideration of whether bank's right to refund was limited to pro rata formulation in subsequent proceeding involving resettlement of bank's single excise tax).

Thus, as the trial court noted, the only issue at the September 5, 2000 injunction hearing was whether demolition of the structure was the appropriate remedy. In support of her position that the structure should not have been razed, Stacey contends that the City improperly denied her a hearing on the issue of demolition, denied her an opportunity to make repairs and/or sell the property, denied her access to the property to remove her personal items, and improperly razed the structure immediately following the trial court's November 6, 2000 order.

Section 111.1 of the BOCA Code provides that any person affected by a decision of the code official may appeal to the Board, provided that a written application is filed with twenty days after the decision, notice or order was served. (R.R. 28a) The trial court concluded, and we agree, that Stacey was well aware of this right, given the fact that she exercised her appeal

rights to challenge the Board's April 15, 1999 determination that her structure was unsafe, unfit for human habitation, etc. The record clearly demonstrates that Stacey did not appeal the City's notice of demolition and, in fact, asked for an extension of time to make repairs. Therefore, the trial court's conclusion that Stacey was not entitled to a hearing on the issue of demolition was correct.

She further contends that the City denied her an opportunity to make repairs or sell her property. The facts show that, realistically, Stacey was on notice as early as 1997 that her structure was in violation of the City's property maintenance code. Although Stacey was aware of this, she did not make any substantial repairs to bring the structure up to code. As noted by the trial court, the only attempt to make repairs occurred when Stacey trucked in two loads of sand.

Additionally, Stacey erroneously maintains that the City denied her the right to sell her property. Section 107.5 of the BOCA Code allows an owner to transfer ownership of property in limited circumstances. In order to transfer property, the grantor must furnish the grantee with a copy of the notice of violation issued by the city official and furnish the city official with a signed statement from the grantee acknowledging receipt of the notice of violation and accepting responsibility for the violations. (R.R. 27a) During the September 5, 2000 injunction hearing, Raymond Stacey testified that there were buyers interested in the property; however, he failed to provide documentation evidencing that

compliance with Section 107.5 of the BOCA Code was underway.

She further complains that the City denied her access to the structure to remove her personal items. The evidence established that the City first informed Stacey on June 1, 2000 that repairs were needed or demolition would take place. On August 1, the City informed Stacey that she had until August 17, 2000 to remove her personal items. Raymond testified that he was given an opportunity to remove personal items. (R.R. 123a) Moreover, he stated that he was at the property weekly, if not daily, despite the fact that the structure had been boarded and padlocked. (R.R. 131a) Thus, there is no merit to Stacey's argument that she did not have an opportunity to retrieve her personal items from the structure prior to its demolition.

And finally, Stacey maintains that the City acted hastily in razing the structure the day after the trial court denied her exceptions to the decree nisi. While we do not condone the City's haste, we cannot say that its actions were improper. To reiterate, the City informed Stacey in June of 2000 that demolition would occur if the repairs were not made. She was informed on August 1 that demolition would occur on August 28. Demolition was stayed pursuant to the temporary injunction. It is evident that Stacey was afforded due process throughout the proceedings and availed herself of the legal avenues available to her.

Stacey also maintains that the trial court erred in determining that the structure required demolition because it was a nuisance and unsafe. We disagree.

Stacey relies on several cases to support her position, all of which are distinguishable. In *Herrit v. Code Mgmt. Appeal Bd. of Butler*, 704 A.2d 186 (Pa. Cmwlth. 1997), Herrit was denied the opportunity to make repairs. Under former Section 110.2 of BOCA Code, where the cost of repairs exceeded 100 percent of the then-current value of the structure, repairs were deemed unreasonable and the structure was to be razed. On appeal, we determined that Section 110.2 of the BOCA Code was not rationally related to the public health, safety, or general welfare of the public because there was no rationale basis to deny the property owner the opportunity to make repairs regardless of the costs. As previously noted, Stacey was given ample notice and opportunity to make the required repairs but failed to take substantial steps to do so.

Stacey likewise relies on *Commonwealth v. Borriello*, 696 A.2d 1215 (Pa. Cmwlth. 1997), aff'd, 555 Pa. 219, 723 A.2d 1021 (1999), where we reversed a lower court's determination that the property owners were in violation of the Donora Borough Ordinance that required compliance with the BOCA Code. In Borriello, the property owners were charged with various violations of the BOCA Code. Their summary convictions, however, were based on other violations for which they were not charged.

On appeal, we reversed the lower court's determination. We concluded that the property owners were not afforded due process of law where they did not have fair notice of the charges upon which their convictions were ultimately based. We did not, however, conclude that the lower court erred in determining that demolition was the appropriate remedy to abate the nuisance. Presently, there was no evidence suggesting that Stacey faced summary offenses. More importantly, though, is the fact that Stacey was fully informed of the repairs necessary to bring her structure into compliance with the BOCA Code.

Stacey further relies on *Groff v. Borough of Sellersville*, 314 A.2d 328 (Pa. Cmwlth. 1974). In that case, Groff's building was declared a public nuisance and the lower court provided Groff with ninety days to make the necessary repairs. Because Groff did not comply with the repair order, the lower court determined that the only reasonable remedy was to raze the structure.

We reversed on appeal. Although we concluded that the record supported a fading that the structure was a public nuisance, we determined that the lower court erred in ordering that it be razed without first obtaining evidence that Groff could not or would not make the necessary repairs. Thus, the case was remanded for a more appropriate remedy.

In the case sub judice, there is sufficient evidence that Stacey had ample opportunity to make the

necessary repairs but failed to do so. Given the entire time frame involved, from 1997 to August of 2000, it is clearly evident that the record supports the trial court's finding that Stacey desired to sell the property rather than make the necessary repairs. (Finding of Fact No. 15) [4]

Of the cases reviewed, the present facts are more akin to those in *Keystone Commercial Prop., Inc. v. City of Pittsburgh*, 464 Pa. 607, 347 A.2d 707 (1975). In December of 1970, Keystone became the equitable owner of property previously owned by the Caplans, who were notified in June of 1970 that their property was in a dangerous condition and was being condemned. Keystone was fully aware of the property's status at the time it entered into the purchase agreement.

In March of 1971, Keystone sealed the building, delaying demolition for six months. During this time

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[4] Stacey further relies on *King v. Tp. of Leacock*, 552 A.2d 741 (Pa. Cmwlth. 1989). In that case, we concluded that the lower court erred in ordering demolition where there was no finding that the structure constituted a public danger and where the parties had made substantial repairs on the premises. We also commented that the property owners were not sufficiently informed of the repairs needed where they were told to bring the property "up to the standards of the general neighborhood." Id., 552 A.2d at 744. We found this standard to be too vague because the township did not have a building code from which to detuning the structural soundness of the building involved. Presently, Stacey did not present sufficient evidence demonstrating that she repaired the structure to the point that it was no longer unsafe for human habitation or in danger of collapse.

Keystone was to repair the dangerous conditions of the building; however, no repairs were made. Thereafter in October of 1972, Keystone indirectly received the same notice received by the Caplans in 1970. In November, the building was demolished.

In an equity action, Keystone sought to compel the City of Pittsburgh to restore the building or to pay the value of the building. The Supreme Court rejected Keystone's argument that it was not provided notice of the demolition via the June 1970 notice because it purchased the property subsequent to that time.

In rejecting this argument, the Supreme Court reviewed the purposes of the notice to demolish, one of which was to provide the property owner with a reasonable time to make repairs. The Court noted that Keystone was fully aware of its obligation to make repairs at the time it purchased the property, two years prior to demolition, and that Keystone used a six-month grace period to stay demolition. No repairs were made during this time. Thus, under those circumstances, Keystone was afforded ample opportunity to remedy the condition.

Stacey argues that Keystone is distinguishable because in that case, no repairs were made and presently Raymond was able to distribute two loads of sand into the basement of the structure. However, the extent of Stacey' s repairs falls woefully short of those in Groff and her reliance on that case is misplaced. We therefore conclude that the trial court did not err in determining

that demolition of the Stacey structure was the appropriate remedy.

Accordingly, we affirm. [5]

s/ Jess S. Jiuliante
JESS S. JIULIANTE, Senior Judge

[5] The Board's request for counsel fees is denied.

APPENDIX A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Helen Stacey

v. No. 2734 C.D. 2000

City of Hermitage Board of Appeals

Helen Stacey

v.

City of Hermitage and City of Hermitage Board of Appeals

Appeal of: Helen Stacey

ORDER

AND NOW, this 8th day of November, 2001, the November 6, 2000 order of the Court of Common Pleas of Mercer County is hereby AFFIRMED.

s/ Jess S. Jiuliante
JESS S. JIULIANTE, Senior Judge

Certified from the Record
November –8 2001
and Order Exit

APPENDIX B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Helen Stacey

v. No. 2734 C.D. 2000

City of Hermitage Board of Appeals

Helen Stacey

v.

City of Hermitage and City of Hermitage Board of Appeals

Appeal of: Helen Stacey

ORDER

NOW, January 28, 2002, having considered appellant's application for reconsideration, and the answers of appellee City of Hermitage and City of Hermitage Board of Appeals, the application is denied.

BY THE COURT

s/ James G. Colins
JAMES GARDNER COLINS, President Judge

Certified from the Record
JAN 29 2002
and Order Exit

APPENDIX C

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

HELEN STACEY, No. 129 WAL 2002

Petitioner

Petition for Allowance of Appeal from the Order of the Commonwealth Court

v.

CITY OF HERMITAGE AND CITY OF HERMITAGE BOARD OF APPEALS,

Respondents

ORDER

PER CURIAM

AND NOW, this 10th day of July 2002, the Petition for Allowance of Appeal is denied.

A True Copy John A. Vaskov
As of: July 10, 2002
Attest: s/ John A. Vaskov
Deputy Prothonotary
Supreme Court of Pennsylvania

APPENDIX D

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

HELEN STACEY, No. 129 WAL 2002

Petitioner

Petition for Reconsideration

v.

CITY OF HERMITAGE AND CITY OF HERMITAGE BOARD OF APPEALS,

Respondents

ORDER

PER CURIAM

AND NOW, this 24th day of September 2002, the Application for Reconsideration is denied.

A True Copy Patricia Honard
As of: September 24, 2002
Attest: s/ Patricia Honard
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX E

CITY OF HERMITAGE PROPERTY MAINTENANCE CODE (BOCA NATIONAL PROPERTY MAINTENANCE CODE / 1966) --- SELECTED SECTIONS ---

* * *

PM-105.3 Right of entry: The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law.

* * *

SECTION PM-106.0 VIOLATIONS

PM-106.1 Unlawful acts: It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, demolish, maintain, fail to maintain, provide, fail to provide, occupy, let to another or occupy or permit another. person to occupy any premises, property, structure or equipment regulated by this code, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this code, or to fail to obey a lawful order of the code official, or to remove or deface a placard or notice posted under the provisions of this code.

PM-106.2 Penalty: Any person who shall violate a provision of this code shall, upon conviction thereof, be

subject to a fine of not less than [AMOUNT] nor more than [AMOUNT] or imprisonment for a term not to exceed [NUMBER] days, or both, at the discretion of the court. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

PM-106.3 Prosecution: In case of any unlawful acts the code official shall institute an appropriate action or proceeding at law to exact the penalty provided in Section PM-106.2. Also, the code official shall ask the jurisdiction's legal representative to proceed at law or in equity against the person responsible for the violation for the purpose of ordering that person:

1. To restrain, correct or remove the violation or refrain from any further execution of work;
2. To restrain or correct the erection, installation, maintenance, repair or alteration of such
3. To require the removal of work in violation; or
4. To prevent the occupancy of the structure that is not in compliance with the provisions of this code.

SECTION PM-107.0 NOTICES AND ORDERS

PM-107.1 Notice to owner or to person or persons responsible: Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible therefore in the manner prescribed in Sections PM-107.2....

APPENDIX E

PM-107.2 Form: Such notice prescribed in Section PM-107.1 shall:

1. Be in writing;
2. Include a description of the real estate sufficient for identification
3. Include a statement of the reason or reasons why the notice is being issued; and
4. Include a correction order allowing a reasonable time for the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code

* * *

PM-107.4 Penalties: Penalties for noncompliance with orders and notices shall be as set forth in Section PM-106.2

PM-107.5 Transfer of ownership: It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of

violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

* * *

SECTION PM-110.0 DEMOLITION

PM-110.1 General: The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgement is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to raze and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to raze and remove at the *owner's* option; or where there has been a cessation of normal construction of any of any structure for a period of more than two years, to raze and remove such structure.

PM-110.2 Order: All notices and orders shall comply with Section PM-l07.0.

PM-110.3 Failure to comply: If the owner of a premises fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be razed and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such razing and removal shall be charged against the real estate upon

which the structure is located and shall be a lien upon such real estate.

PM-110.4 Salvage materials: When any structure has been ordered razed and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such razing and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

SECTION PM-111.0 .0 MEANS OF APPEAL

PM-111.1 Application for appeal: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

* * *

APPENDIX F

PENNSYLVANIA RULES OF APPELLATE PROCEDURE

-- SELECTED RULES --

RULE 311. INTERLOCUTORY APPEALS AS OF RIGHT

(a) General Rule. An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

* * *

(4) *Injunctions.* An order granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify' injunctions, except for injunctions pursuant to Sections 3323(0 and 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) and 3505(a). A decree nisi granting or denying an injunction is not appealable as of right under this rule, unless ***the decree nisi*** (i) grants an injunction effective upon the entry of a decree nisi or ***(ii) dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi.*** (emphasis added)

* * *

RULE 902. MANNER OF TAKING APPEAL

An appeal permitted by law as of right from a lower court to an appellate court shall be taken by filing a notice of appeal with the clerk of the lower court within

the time allowed by Rule 903 (time for appeal). ***Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal***, but it is subject, to such action as the appellate court deems appropriate, which may include, but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken. (emphasis added)

Note

* * *

The notice of appeal is filed in the lower court and copies thereof, together with copies of the proof of service, are mailed and delivered to all who need to know of the appeal: other parties, lower court judge, official court reporter. ***The clerk of the trial court transmits one set of the filed papers to the appellate prothonotary (with the requisite filing fee).*** (emphasis added)

* * *

The new procedure has a number of advantages: (1) the taking of the appeal is more certain...because the appellant may toll the time for appeal by filing the notice of appeal in his local court house thereby eliminating the time lost in transmission of the appeal by mail; (2) the initial filing in the lower court raises an immediate caveat on the record before irreversible or undesirable action is taken on the faith of the judgment

appealed from;... (4) ***the new procedure necessarily eliminates the "trap" of failure to perfect an appeal, since the notice of appeal is self-perfecting....*** (emphasis added)

* * *

RULE 905. FILING OF NOTICE OF APPEAL

(a) Filing With Clerk. Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Rule 906 (service of notice of appeal), shall be filed with the clerk of the trial court.... ***Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall he shown on the docket.... A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.*** (emphasis added)

(b) Transmission to Appellate Court. ***The clerk shall immediately transmit*** to the prothonotary of the appellate court named in the notice of appeal ***a copy of the notice of appeal showing the date of receipt, the related proof of service and a receipt showing collection of any docketing fee....*** (emphasis added)

* * *

APPENDIX F

Note

Insofar as the clerk or prothonotary of the lower court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of certiorari in the usual form issued out of the appellate court named therein and returnable thereto within the time prescribed by Chapter 19 (preparation and transmission of record and related matters).

* * *

RULE 1925. OPINION IN SUPPORT OF ORDER

(a) General Rule. ***Upon receipt of the notice of appeal the judge*** who entered the order appealed from, if the reasons for the order do not already appear of record, ***shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order***, or for the rulings or other matters complained of, ***or shall specify in writing the place in the record where such reasons may be found.*** (emphasis added)

* * *

APPENDIX G

PENNSYLVANIA CRIMES CODE
18 Pa.CS -- SELECTED SECTIONS --

§ 4910. Tampering with or fabricating physical evidence

A person commits a misdemeanor of the second degree if, believing that an ***official proceeding*** or investigation ***is pending or about to be instituted***, he:

(1) ***alters, destroys***, conceals or removes any record, document ***or thing*** with intent ***to impair its verity or availability*** in such proceeding or investigation; or

(2) makes, presents or uses any record, document or thing knowing it to be false and with intent to mislead a public servant who is or may be engaged in such proceeding or investigation.

(emphasis added)

§ 4911. Tampering with public records or information

(a) Offense defined. —
A person commits an offense if he:

(1) knowingly ***makes a false entry in, or false alteration of, any record***, document or thing belonging to, or ***received*** or kept ***by, the government***

for information or record, or required by law to be kept by others for information of the government;

(emphasis added)

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection; or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(b) Grading. —An offense under this section is a misdemeanor of the second degree unless the intent of the actor is to defraud or injure anyone, in which case the offense is a felony of the third degree.

Supreme Court, U.S.
FILED
MAR 6 2003
OFFICE OF THE CLERK

No. 02-1032

IN THE

Supreme Court of the United States

HELEN STACEY,

Petitioner,

v.

CITY OF HERMITAGE and
CITY OF HERMITAGE BOARD OF APPEALS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION FOR RESPONDENT CITY OF HERMITAGE

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QUESTIONS PRESENTED

Whether the City of Hermitage and City of Hermitage Board of Appeals seizure and demolition of Petitioner's property, upon the determination of the Board of Appeals that the property was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth, and in danger of collapse and subsequent to Stacey availing herself of the process of legal review available pursuant to the relevant City ordinances and Pennsylvania law, was reasonable under the Fourth and Fourteenth Amendments?

Whether conduct by the trial judge and civil filing clerk (prothonotary) amounted to a deprivation of procedural due process in violation of the Fourteenth Amendment?

Whether the issues raised by Petitioner Helen Stacey are unripe for disposition by this Court, as such issues are currently pending before the United State District Court for the Western District of Pennsylvania in a case captioned *Stacey v. City of Hermitage, et al.*, No. 02-CV-1911.

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STATEMENT OF THE CASE

In 1997, Respondent, City of Hermitage ("City") provided Petitioner Helen Stacey ("Stacey") notice that real property owned by Stacey (and her now-deceased husband) located in the City was in violation of the City's Property Maintenance Code and therefore, the City was proceeding to have the property determined to be a public nuisance. In 1998, the City adopted a Property Maintenance Code that mirrors the Building Officials and Code Administrators National Property Maintenance Code ("BOCA Code"). Thereafter, the City notified Stacey that her property was in violation of the BOCA Code and that any corrective action was required to be completed within thirty (30) days of the notice.

Stacey appealed to Respondent City of Hermitage Board of Appeals ("Board"). After a hearing held on April 15, 1999, the Board determined that Stacey's property was an unattractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth, a fire hazard and in danger of collapse. Again, Stacey appealed. By Order dated April 19, 2000, the Mercer County Court of Common Pleas, Thomas R. Dobson, Judge ("Trial Court") affirmed the Board's determination in all respects except one. The Trial Court reversed the Board's determination that Stacey's property constituted a fire hazard. Stacey did not appeal from that Order.

Thereafter, the City began proceedings to have the structure demolished. On Jun 1, 2000, the City informed Stacey that she had the right to cure the structure's defects within thirty (30) days of such notice; if no remedies were taken, demolition would follow. Stacey's son, Raymond

Stacey, requested an extension of time in which to make repairs on or about June 30, 2000. By that time, Raymond had distributed two (2) loads of sand into the structure's basement in an attempt to remedy caving caused by previous flooding. No further repairs were undertaken.

On August 30, 2000, Stacey filed a Petition for temporary injunction against the Board and the City. As a basis for that action, Stacey alleged that she was arbitrarily denied a hearing before the Board on the issue of demolition, that she was not notified of her right to appeal the City's decision to demolish her residence, and that the structure had value and could be restored.

The Trial Court issued an Order granting the temporary injunction and set a permanent injunction hearing for September 5, 2000. After such hearing, the Trial Court determined that it was bound by its April 19, 2000 Order, and determined that Stacey was not entitled to a hearing before the Board because no timely appeal was filed. Thereafter, the Trial Court entered a Decree Nisi dissolving the temporary injunction. Stacey attempted to file a Notice of Appeal and Application for Stay with respect to the September 5, 2000, Decree. The Notice of Appeal was returned by the Prothonotary and the Application for Stay was denied by the Trial Court, as the Decree was interlocutory and not final and appealable. On September 18, 2000, Stacey filed timely exceptions to the Trial Court's decree and on November 6, 2000, the Trial Court entered an Order affirming its prior Decree. On November 7, 2000, the City demolished the structure. Thereafter, on December 4, 2000, Stacey appealed the Trial Court's Order affirming its decree to the Commonwealth Court of Pennsylvania.

The Commonwealth Court, in an opinion issued November 8, 2001, which is appended to Stacey's Petition for Writ of Certiorari, first concluded that Stacey was unable to appeal the Board's decision that her structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage, and uncontrolled weed growth, and in danger of collapse as Stacey did not appeal the Trial Court's April 19, 2000 Order, which affirmed the Board's determination. Such failure to appeal precluded her from challenging such determination in a later proceeding. (Pet. Appendix A at 5). Moreover, the Commonwealth Court concluded that the Trial Court had properly ruled, at the September 5, 2000 Injunction Hearing, that demolition of the structure was the appropriate remedy. (*Id.* at 11-12). In reaching such a conclusions, the Commonwealth Court first found that Stacey was well aware of her right to appeal the City's Notice of Demolition, however, she did not do so, and in fact, requested an extension of time to make repairs to the structure. (*Id.* at 5-6). Thus, Stacey was not entitled to hearing on the issue of demolition. (*Id.* at 6). Secondly, the Commonwealth Court held that Stacey was on notice as early as 1997 that her structure was in violation of the City's Property Maintenance Code and despite such awareness, did not make any substantial repairs to bring the structure up to code. (*Id.*). Moreover, because Stacey failed to provided documentation evidencing compliance with Section 107.5 of the BOCA Code, relating to transfer of ownership, of a property in limited circumstances, there was no merit to Stacey's claim that the City denied her the right to sell her property. (*Id.* at 6-7).

The Commonwealth Court also rejected Stacey's contention that the City denied her access to the structure to remove her personal items prior to demolition. (*Id.* at 7).

The Court considered the facts that: (1) the City informed Stacey on June 1, 2000 that demolition would ensue if the required repairs were not made; (2) the City informed Stacey that she had until August 17, 2000 to remove personal items; and (3) Raymond Stacey testified that he was given the opportunity to remove personal items and was at the property, according to his testimony, weekly, if not daily, despite the fact that the structure had been boarded and padlocked. Therefore, Stacey's argument that she did not have opportunity to retrieve her personal items from the structure before demolition was without merit. (*Id.*) The Commonwealth Court rejected Stacey's argument that the City acted somehow improperly by razing the structure following the Trial Court's denial of her exceptions to its decree. The Court held that it was evident that Stacey was afforded due process throughout the proceedings, availed herself of the legal avenues available to her, and was aware in June, 2000 that demolition would occur if the required repairs were not made. (*Id.*) Finally, the Commonwealth Court rejected Stacey's contention that the Trial Court erred in determining that her structure required demolition because it was a nuisance and was unsafe. There was sufficient evidence that Stacey had many opportunities to make the necessary repairs to the structure, but failed to do so. Given the entire period involved from 1997 through August 2000, it was evident that the record supported the Trial Court's finding that Stacey desired to sell the property rather than make the necessary repairs. (*Id.* at 8-9).

Subsequent to the decision of the Commonwealth Court as aforesaid, Stacey applied for Reconsideration and such Reconsideration was denied by Order of the Commonwealth Court dated January 28, 2002. (*See* Pet. Appendix A at 14). On July 10, 2002, Stacey's Petition for Allowance of Appeal to the Pennsylvania Supreme Court was denied and on September 24, 2002, Stacey's Application for Reconsideration of Allowance

of Appeal to the Supreme Court of Pennsylvania was also denied. (*See* Pet. Appendix A at 15-16). On November 6, 2002, Stacey[1], along with her son Raymond Stacey, filed a civil action pursuant to 42 U.S.C. 1983 against, *inter alia*, the City, various City employees, and the Trial Court, in the United States District Court, Western District of Pennsylvania, alleging violation of civil rights based upon the same conduct and legal issues alleged in her instant Petition. (A copy of the Complaint in *Stacey v. City of Hermitage, et al*, No. 02-CV-1911, is attached hereto as Appendix "A").

REASONS FOR DENYING THE WRIT

Stacey's Petition for Certiorari should be denied for four (4) discrete reasons.

A. Certiorari is unwarranted because issues raised by Stacey in her Petition for Writ of Certiorari were not raised, litigated, or preserved before the Trial Court, Commonwealth Court of Pennsylvania, or Pennsylvania Supreme Court

Stacey claims that "Constitutional issues were raised" before the trial court, Commonwealth Court of Pennsylvania, and Pennsylvania Supreme Court. (Pet. at 8-9).

Ordinarily, this Court will not decide questions not raised, litigated, or preserved in the lower courts. *City of Springfield, Massachusetts v. Kibbe*, 480 U.S. 257, 259 (1987), *reh'g den.*, 481 U.S. 1033 (1987); *see also Equal Employment Opportunity Comm'n v. Fed. Labor Relations Auth.*, 476 U.S. 19, 24 (1986);

---

1. The Complaint in the pending civil action is signed by Raymond Stacey, attorney in fact for Helen Stacey, as well as by Raymond Stacey, individually.

Oklahoma City v. Tuttle, 471 U.S. 808, 814-15 (1985), *reh'g den.*, 473 U.S. 925 (1985) (Respondent waived preservation objection where it did not bring the issue to the Court not later than the brief in opposition to petition for certiorari).

In her Statement of Matters Complained Of, filed with respect to the Trial Court's November 6, 2000 Order, Stacey complained, *inter alia*, that the Trial Court "erred in not determining that the use of the City of Hermitage Police Powers was arbitrarily and capriciously applied to" her.[2] (Stacey Stat. Of Matters Compl. Of at 2). Similarly, in her brief to the Commonwealth Court, Stacey framed the issue as "WHETHER THE CITY'S ARBITRARY AND CAPRICIOUS ACTIONS IN CONTROLLING AND THEN DEMOLISHING THE PROPERTY CONSTITUTE A TAKING IN VIOLATION OF THE CONSTITUTION OF PENNSYLVANIA." (Stacey Commw. Ct. Brief at 15). At no point during the appeal to the Commonwealth Court did Stacey make a Fourth Amendment Argument. Moreover, the Commonwealth Court did not address any constitutional arguments, whether based upon the Pennsylvania Constitution or the United States Constitution in its Opinion of November 8, 2001.[3] Stacey's Petition for Allowance of Appeal to the Supreme Court of Pennsylvania and her subsequent Application for Reconsideration do not raise the Fourth Amendment issue.

---

2. Although Stacey averred, in the Statement of Matters Complained Of, that she suffered a taking of property at the hands of the City, and thereby was denied due process, she does not frame such averment as a matter of which she complained. (*See* Stat. Of Matters Compl. Of at 2).

3. The Commonwealth Court, after restating that Stacey had appropriate notice of all proceedings and had, on multiple occasions, exercised her right to appeal, held: "It is evident that Stacey was afforded due process throughout the proceedings and availed herself of the legal avenues available to her." (Pet. Appendix A at 6).

At no time prior to her Application for Reconsideration to the Commonwealth Court did Stacey raise the issue of a violation of her right to due process of law based upon allegations that the "trial judge and lower court clerk"[4] failed to process her notice of appeal.[5] Further, although Stacey appended the language of the Fourteenth Amendment to her Petition for Allowance of Appeal to the Pennsylvania Supreme Court, no argument relating thereto was made within. (*See* Stacey Pet. Allow. Appeal at 1).

Because Stacey neither raised initially upon appeal nor thereafter preserved the Fourth and Fourteenth Amendment issues, and because such issues were not litigated before the Trial Court or the Pennsylvania appellate courts, Stacey cannot properly raise them before this Court. Furthermore, as set forth below in C., Stacey has filed, in the United States District Court, Western District of Pennsylvania, a civil action pursuant to 42 U.S.C. § 1983 against, *inter alia*, the City, various City employees, and the Trial Court alleging violation of civil rights based upon the same conduct and legal issues alleged in her Petition. Thus, as Stacey has not previously raised, litigated, or preserved the issues in this matter, and because she has elected to pursue such issues another, pending case, such issues cannot be presently addressed by this Court.

---

4. In Pennsylvania, the civil clerk for the Courts of Common Pleas is the office of the Prothonotary.

5. Raymond Stacey alluded to the issue in his Reply Brief of Amicus Curiae in Support of Appellant's Position, although he did not brief the same therein. (*See* Reply Brief of Amicus Curiae at 1).

B. Certiorari is unwarranted because the City's seizure and demolition of Stacey's property is not violative of the Fourth and Fourteenth Amendments where it occurred after the determination of the Board that the property was a nuisance, and after Stacey availed herself of the process of legal review available pursuant to the relevant City ordinances and Pennsylvania law

Stacey claims that her petition should be granted because the demolition of her property "without specific warrant, judicial process or emergency" amounts to a violation of her rights under the Fourth and Fourteenth Amendments to the United States Constitution. (Pet. at 8).

In fact, it has been held that a city's seizure and demolition of buildings, after such buildings were condemned in accordance with city ordinance and state law, was reasonable under the Fourth Amendment. *Freeman v. City of Dallas*, 242 F.3d 642, 654 (5th Cir. 2001), *cert. denied*, 534 U.S. 817 (2001). *Freeman* involved a situation in which owners of vacant apartment buildings brought suit against the City of Dallas, under 42 U.S.C. § 1983, alleging that the city's destruction of the buildings as urban nuisances based upon finding s of the city's Urban Rehabilitation Standards Board was violative of, *inter alia*, the Fourth and Fourteenth Amendments. *Id.* at 647. The city cited the owners for non-compliance with the city's Minimum Urban Rehabilitation Standards Code, and, when the violations were not corrected, the matter was referred to the Standards Board, which mailed notices of hearing to the owners.[6] *Id.* at 645-46. After the

6. The notice of hearing indicated that the owners had the opportunity to present witnesses and evidence and that demolition could be ordered to remedy the code offenses. *Freeman*, 242 F.3d at 645-46.

hearing, at which Freeman appeared and presented evidence and testimony, the Standards Board thereafter voted unanimously to demolish the buildings as urban nuisances. *Id.* at 646. Freeman thereafter requested and received a rehearing, before which, members of the Standards Board visited and inspected the buildings. *Id.* At the rehearing, Freeman submitted further evidence and testimony, and again the Standards Board voted to demolish the buildings. *Id.* The owners did not avail themselves of their right to appeal the Standards Board's decision to the appropriate state court. *Id.* at 646-647. The owners failed to demolish the buildings within the required period, and the city hired a contractor to perform the works, assessing the cost of demolition against the owners. *Id.* at 647. One and one-half years later, the owners brought suit against the city. *Id.*

The Fifth Circuit Court, upon rehearing en banc, held that, while the condemnation and demolition as urban nuisances constituted a seizure for purposes of the Fourth Amendment, it was reasonable, despite the city's failure to obtain a warrant to enforce the demolition order. Such holding was based upon: (1) recognition that the establishment of minimum property maintenance standards to protect the public was reasonable; (2) the presence of an adequate administrative process of which the owners availed themselves; (3) the possibility of state court review; (4) the inability of the Standards Board to act with unfettered discretion; (5) the existence of a warrant is not required for a reasonable seizure under the Fourth Amendment; and (6) the owners' expectations of privacy in nuisance buildings was substantially diminished after the remedial orders became final.

Presently, Stacey was aware of and utilized the legal process available to her. Indeed, she brought appeals at each level of the proceedings: to the Board, to the Trial Court, to the Commonwealth Court, and to the Pennsylvania Supreme Court. Per *Freeman*, the City's seizure and demolition of Stacey's structure, after such structure condemned in accordance with BOCA Code and state law, was reasonable under the Fourth Amendment. *Freeman*, 242 F.3d at 654. Throughout the proceedings, the City and Board acted in accordance with the provisions of the BOCA Code, Pennsylvania Law, and the relevant Court orders. The fact that the City, Board and courts reached decisions unfavorable to Stacey does not render the demolition of her structure unreasonable.

Moreover, per *Freeman*, Stacey's argument that a warrant was required before seizure and demolition is without merit. *Freeman*, 242 F.3d at 653. Stacey relies upon *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967), in support of this argument. (Pet. at 10). However, *Camara* is distinguishable as it extended the warrant requirement to administrative inspections to verify compliance with municipal health and safety codes. *Freeman*, 242 F.3d at 650-51. Here, as in *Freeman*, evidence of code violations had already been obtained by means unchallenged by Stacey. *Id.* at 651. ("What is sought by [petitioners] is not protection from an unregulated search for wrongdoing, but additional protection to forestall the result of an already determined wrongdoing.") Therefore, *Camara* does not support a warrant requirement following a completed nuisance abatement procedure. *Id.*

Stacey also contends that the seizure and demolition of her structure amounts to a denial of due process. (Pet. at 8). Generally, pursuant to the Due Process clauses of the Fifth and Fourteenth Amendments, individuals must receive notice and opportunity to be heard before the government deprives them of property. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993) (citing *United States v. $8,850*, 461 U.S. 555, 562 n.12 (1983); *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972), *reh'g den.*, 409 U.S. 902 (1972); *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969) (Harlan, J. concurring); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)); *see also Maguire v. Reardon*, 255 U.S. 271, 272-73 (1921) (Demolition or removal of building erected in violation of city charter and ordinances does not violate Constitutional protections); *cf. GM Leasing Corp. v. United States*, 429 U.S. 338, 352 n.18 (1977) (Where seizures are sustainable under the Due Process Clause, analysis under the Fourth Amendment "is similar and yields a like result"). As set forth above, Stacey availed herself of a hearing before the Board and then the Trial Court regarding the City's determination of violations. Thereafter, Stacey received notice that demolition would occur if she failed to cure the structure's defects. Although the opportunity to appeal the notice of demolition was available, Stacey did not do so. Instead, she requested an extension of the cure period, and then petitioned for a temporary injunction. These facts are indicative that due process was afforded Stacey throughout the proceedings. The fact that, through the appeal process, the City, Board and courts reached decisions unfavorable to Stacey does not render the demolition of her structure a violation of due process protections.

C. Certiorari is unwarranted because the Trial Court and Mercer County Prothonotary neither "unlawfully altered" nor "refus[ed] to process" Stacey's Notice of Appeal

Stacey claims that the Trial Court and Prothonotary altered Stacey's Notice of Appeal, resulting in a denial of her right to dues process of law guaranteed by the Fourteenth Amendment.

The relevant provision of the Pennsylvania Rules of Appellate Procedure provides that a "A decree nisi granting or denying an injunction is not appealable as of right . . . unless the decree nisi . . . dissolves a previously granted preliminary injunction *effective upon the entry of a decree* nisi." Pa. R.A.P 311(a)(4)(ii) (emphasis added). As set forth above, the Trial Court entered an interlocutory Decree Nisi on September 5, 2000 dissolving the preliminary injunction. As the Decree was interlocutory, the dissolution of the preliminary objection was not effective upon entry of the Decree and was not appealable as of right. Stacey, through counsel, filed timely Exceptions. Before the Decree became final and appealable, Stacey, again through counsel, filed both an Application for Stay, which the Trial Court denied as its Decree was interlocutory, and attempted to file a Notice of Appeal, which was inadvertently time stamped by an employee of the Prothonotary but not entered upon the docket. Realizing that the filing of the Notice of Appeal was premature, as the Decree was not final and appealable, the Prothonotary notified Stacey's counsel of the error and returned the Notice of Appeal. Thus, any error is attributable to Stacey's counsel, and Stacey's claim is without merit.

D. Certiorari is unwarranted because the issues raised by Stacey in her Petition are the subject of an ongoing civil action in the United States District Court for the Western District of Pennsylvania

As set forth in A., *supra*, Stacey's Fourth and Fourteenth Amendment issues were not raised, litigated or preserved before the Trial Court or Pennsylvania appellate courts. Further, Stacey has initiated a 42 U.S.C. § 1983 action against the City, various city employees, the Trial Court and Mercer County Prothonotary based upon the same conduct alleged and same issues raised in her Petition. (*See* Stacey Complaint at ¶¶31, 34, 37, 40, 42, 52-58). As these issues were not properly raised in the present appeal, and because such issues are the subjects of litigation pending before another court, it would be improper for this Court to address them presently.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX — COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES DATED NOVEMBER 6, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES

Jury Demand Endorsed Hereon

HELEN STACEY
2220 High St Apt 611
Cuyahoga Falls, OH 44221

and

RAYMOND STACEY
123 Hickory Ln SW
Warren OH 44481

Plaintiffs

vs

CITY OF HERMITAGE
800 N Hermitage Rd
Hermitage PA 16148

GARY P HINKSON, Individually and in Official Capacity as City Manager of Hermitage,
800 N Hermitage Rd.
Hermitage PA 16148

Appendix

EDWARD STANTON, Individually and in
Official Capacity as Police Chief of Hermitage,
800 N Hermitage Rd
Hermitage PA 16148

RUSSELL V PENN JR, Individually and in
Official Capacity as City Inspector of Hermitage,
800 N Hermitage Rd
Hermitage PA 16148

JEFFERY OSBORNE, Individually and in
official capacity as Asst City Inspector of Hermitage,
800 N Hermitage Rd
Hermitage PA 16148

ROBERT S GOELTZ, Individually and in
Official Capacity as Fire Marshall of Hermitage,
800 N Hermitage Rd
Hermitage PA 16148

JAMES "PAT" WHITE, Individually and in
Official Capacity as Commissioner of Hermitage,
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Appendix

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thru its Employees and Agents,
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New Castle PA 16101

RICHARD SEREDAY, and ROSEANN SEREDAY,
doing business as SEREDAY EXCAVATING,
694 Yankee Run Rd
Masury, OH 44438

VIROSTICK TRANSFER CO, thru its Owners,
Employees and Agents,
159 Pitt St
Sharon PA 16146

WODZIANSKI & SMITH INC, thru its
Owners, Employees and Agents,
Address unknown

Appendix

RICHARD G ENGLISH & ASSOC, thru
Its Owners, Employees and Agents,
191 Connelly Blvd
Sharon PA 16146

THOMAS R DOBSON Individually and in
Official Capacity as Common Pleas
Judge of Mercer County,
Mercer County Courthouse
North Diamond St
Mercer PA 16137

ELIZABETH F FAIR, Individually and in
Official Capacity as Prothonotary of Mercer County,
thru Her Office, Employees and Agents,
Mercer County Courthouse
North Diamond St
Mercer PA 16137

Defendants

JURISDICTION

1. This Court has jurisdiction under 28 USC §§ 1331 and 1343, and 1332, if necessary, and 18 USC §§ 1964 and 1965, if conspiracy is deemed appropriate. This action flows primarily from 42 USC § 1983 and seeks to redress deprivation under color of state law of rights secured to plaintiffs by the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. This Court has supplemental jurisdiction over state claims pursuant to 28 USC § 1367. Jurisdiction is further conferred by 28 USC §§ 2201 and 2202 for declaratory and injunctive relief.

Appendix

PARTIES

2. Plaintiff Helen Stacey is a citizen of the United States and owner of the property at 1560 East State Street in the City of Hermitage, Mercer County, Pennsylvania. She resided there until July 1, 1997, when she and her husband, Andrew, now deceased, were ordered to vacate the family home by defendant City of Hermitage after a heavy rain flooded the cellar, She now lives at 2220 High St, Apt 611, Cuyahoga Falls, Summit County, Ohio.

3. Plaintiff Raymond Stacey is a citizen of the United States, the son of Helen Stacey and her attorney-in-fact. For most of his live he lived at the family home, but now resides at 123 Hickory Lane SW, Warren, Trumbull County, Ohio.

4. Defendant City of Hermitage (City) is a municipal government organized and operating under the laws of Pennsylvania and is located in Mercer County, Pennsylvania.

5. Defendant Gary P Hinkson is the City Manager of Hermitage responsible for the day-to-day operation, decisions and business of the City. At the time of the occurrences alleged herein, it was his duty to supervise city activities so as not to injure plaintiffs or deprive them of their civil rights.

6. Defendant Edward Stanton is the chief police officer of Hermitage responsible for the police department and as such it was his duty to supervise police activities so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

7. Defendant Russell V Penn Jr is City Inspector and Health Officer of Hermitage responsible for enforcing the provisions of the City Property Maintenance Code and as such conducts housing inspections and issues notices and orders for violations of the Code. At the time of the occurrences alleged herein, it was his duty not to injure plaintiffs or deprive them of their civil rights.

8. Defendant Jeffery Osborne is a city inspector who assists defendant Penn in housing inspections within the City, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

9. Defendant Robert S Goeltz is Fire Marshall of Hermitage and responsible for the operation of the City fire department. At the time of the occurrences alleged herein, it was his duty to supervise fire department activities so as not to cause injuries to plaintiffs or deprive them of their civil rights.

10. Defendant James "Pat" White is an elected commissioner of the City of Hermitage responsible for legislative functions and activities, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

11. Defendants Thomas W Kuster and H William White III are attorneys with the defendant firm of Ekker, Kuster, McConnell & Epstein of Sharon, Pennsylvania. They are solicitors for the city of Hermitage and responsible for legal advice and services. As such, it was their duty not to injure

plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

12. Defendant Christopher Ferry is an attorney with defendant firm Watts & Pepicelli of Meadville, Pennsylvania. They were retained by plaintiff Helen Stacey to handle problems with Hermitage over building code violations with the family home and to help sell the property. As such, the attorneys had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

13. Defendant Jerry G Cartwright Jr is an attorney in private practice in New Castle, Pennsylvania. When defendants Ferry and his law firm failed to act in filing a trespass action and getting an injunction against Hermitage, plaintiffs retained Attorney Cartwright to get the injunction and petition the court to order the City to hold a hearing before the City appeals board. As such, Attorney Cartwright had a duty not to injure plaintiffs or deprive them of their civil rights.

14. Defendants Penn Power Company and its parent organization Ohio Edison are electric power utility companies. Penn Power maintains offices in New Castle, Pennsylvania, and is regulated by the Pennsylvania Public Utility Commission. As such, Penn Power had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive plaintiffs of their civil rights at the time of the occurrences alleged herein.

15. Defendants Richard Sereday and Roseann Sereday, doing business as Sereday Excavating, ran a heavy equipment demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them the contract to demolish plaintiffs family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

16. Defendant Virostick Transfer Company is a moving company with offices in Sharon, Pennsylvania, and is regulated by the Pennsylvania Public Utility Commission. As such, its owners had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of theoccurrences alleged herein.

17. Defendant Wodzianski & Smith of an unknown address and defendant Richard G English & Associates of Sharon, Pennsylvania, were hired in October/November 2000 by the City of Hermitage to inspect and appraise plaintiffs family home. As such, these defendants had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

18. Defendant Thomas R Dobson is a judge of the Court of Common Pleas in Mercer County, Pennsylvania, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

19. Defendant Elizabeth F Fair is the prothonotary of the Court of Common Pleas in Mercer County, Pennsylvania, and as such it was her duty to supervise the activities of her office, employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

FACTS

20. Helen Stacey was the owner of a large brick building, (the family home), located at 1560 East State Street, Hermitage, Pennsylvania, where she had lived with her family for over 50 years, accumulating a great deal of personal property there, including private papers, tax returns, receipts and family photos.

21. Helen's son Raymond had lived in the family home much of his life and also accumulated personal property there, including private papers, receipts, collectibles and original art work.

22. The City demolished the structure located at 1560 East State Street and in doing so knowingly destroyed evidence so it was not available for any official proceeding.

23. The structure was not a hazard to life, health or safety, and not about to collapse, having withstood the heavy snows of three winters and one earthquake.

24. There were alternatives to demolition, including buyers willing to make repairs acceptable to the City.

25. The City demolition occurred without providing plaintiffs with due process.

26. The City letter of 6/1/2000 sent to plaintiff contains no warning that the City will demolish the home if repairs are not made and does not advise of the right to appeal.

27. Plaintiffs placed three truckloads of dirt into the cellar of the structure to support the foundation, but the City ignored plaintiffs request for an extension of time to continue the repairs.

28. Plaintiffs requested a hearing at the City board of appeals from the demolition notice of 8/1/2000 to consider repairs in progress, the sale of the property to a buyer willing to make the repairs, and time to remove vast amounts of personal property from the family home.

29. Defendant Attorney White summarily refused to convene the City board, denying plaintiffs the opportunity to be heard on the demolition itself and the procedure for inventory of items to be taken or salvaged, as required by City ordinance.

30. Plaintiffs asked defendants Ferry and his firm to file an action in trespass and get an injunction to prevent the demolition. When they failed to act, plaintiffs in a panic rush retained defendant Attorney Cartwright.

31. On August 28 and August 31, 2000, defendants Police Chief Stanton, City Attorney White, Commissioner White, Inspectors Penn and Osborne, workmen from Penn

Power and from Virostick Transfer Co, in concert with others, broke in, searched for evidence and seized personal property without consent, warrant or court order. At one point, Police Chief Stanton reached through the open front door, grabbed and dragged plaintiff Raymond Stacey outside, threatening him with arrest for defiant trespass if he again interfered.

32. City Defendants were continuing a pattern of threat and violence going back two years when they boarded up the home to keep the family and its contractor out, and took the family pickup truck still in running order to a secret place, while ordering the buyer of the truck off the property with threats of arrest.

33. Plaintiffs were issued a temporary injunction preventing demolition at the cost of a $50,000 bond in favor of the City.

34. The temporary injunction was vacated a few days later by defendant Judge Dobson after a hearing where plaintiffs did not have the opportunity to present testimony of contractors and engineers, together with their reports, because plaintiffs Attorney Cartwright failed to ask for and get a continuance.

35. Plaintiff Helen Stacey, through Attorney Cartwright, filed an immediate notice of appeal which by fraud or bad faith in the Mercer County court system on the part of defendants Judge Dobson and Prothonotary Fair, was not docketed or processed per the Pennsylvania Rules of Appellate Procedure, and Plaintiff's motion for appellate stay was rejected despite the fact her $50,000 trial bond was still active in favor of the City.

36. In October or November 2000, upon information and belief, defendants Wodzianski & Smith Inc and Richard G English & Associates, through its owners, employees and agents, together with City defendants and unknown members of the City Fire Department entered and searched the Stacey home without consent, warrant or court order.

37. On November 6, 2000, the City seized the property with force by entering the family home without plaintiffs' consent, using heavy equipment to demolish the structure and removing material from the premises.

38. While plaintiff's case was still pending in the state court system, the City in demolishing the family home destroyed the structure and its contents as evidence so it would not be available for further proceedings, such destruction being in violation of the Pennsylvania Crimes Code § 4910.

39. Defendant Cartwright as plaintiff's attorney failed to attend the final hearing on November 6, 2000. He failed to perfect plaintiff's notice of appeal of 9/7/2000 and failed to secure an appellate stay to protect plaintiff's home.

40. Defendant Judge Dobson was not impartial and showed bias against plaintiffs. He threatened plaintiff Raymond Stacey with jail for zealously pursuing the truth at trial. The judge prevented the processing of plaintiff's notice of appeal of 9/7/2000 when the temporary injunction was vacated by the decree nisi which changed the status quo between the parties and is appealable as of right under Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate

Procedure. The judge had discussions about the case with the City's attorney outside the presence of plaintiff or plaintiff's attorney.

41. On November 6, 2000, when the final decree was entered on the docket, defendants Judge Dobson and Protonotary Fair made no effort to have plaintiff's notice of appeal processed as required by Rule 905 of the Rules of Appellate Procedure:

> Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date . . . which date shall be shown on the docket. . . . A notice of appeal filed . . . before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.
>
> * * *
>
> The clerk shall immediately transmit to . . . the appellate court . . . a copy of the notice of appeal showing the date of receipt

42. The City seized the property with force by entering the family home and demolishing the structure and all its contents without first obtaining a warrant. Among the items destroyed were private papers, tax returns, books, original artwork, collectibles and family photos.

43. The City's demolition of the real and personal property denied plaintiffs the value of the property and deprived them of their civil rights.

44. The City has filed a written lien on the property at 1560 East State Street for more than the amount of the demolition cost.

45. The City filed the lien for more than the cost of demolition without providing plaintiffs the opportunity for a due process hearing on whether the lien should be assessed and whether the amount of the lien was proper.

46. The City's imposition of the lien for demolition costs on the property clouds the title to the property.

47. The City is a corrupt organization and in doing the acts and things complained of the defendants were conspirators engaged in a scheme and conspiracy designed and intended to, and in fact did deny and deprive plaintiffs of Constitutional rights.

49. Specifically, defendants conspired to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the zoning embarrassment of plaintiffs family home. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by the City's retaliatory denial to plaintiffs of a building permit to rebuild the nonconforming structure.

50. Defendant City of Hermitage is a corrupt organization and with other defendants created a conspiracy that should be investigated under the Pennsylvania Crimes Code 18 Pa.CS § 911 and the federal RICO Act 18 USC

§ 1961 et seq. In furtherance of the conspiracy, defendants have carried on interstate activity by using the United States mails and telephone service, and plaintiffs have been damaged thereby.

51. Defendants acted intentionally, maliciously, recklessly and with a callous indifference to the rights of each of the plaintiffs.

CLAIMS FOR RELIEF

52. By demolishing plaintiffs home without adequate prior notice and by failing to provide plaintiffs with an opportunity for a meaningful hearing to dispute the alleged grounds for the emergency demolition, the defendants, acting under color of state law, have deprived plaintiffs of their property without due process of law in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and 42 § 1983.

53. By entering with force and searching plaintiffs home without warrants and without consent, defendants, acting under color of state law, have violated plaintiffs right to be free from unreasonable searches under the Fourth Amendment to the United States Constitution and 42 § 1983.

54. By entering with force and searching plaintiffs home without warrants and without consent, and forcibly seizing plaintiffs home without adequate due process of law, defendants acting under color of state law, have violated plaintiffs right to privacy under the Fourth, Fifth and Ninth Amendments to the United States Constitution and 42 § 1983.

55. Defendants actions, performed under color of state law, including, but not limited to, entering with force, searching and seizing plaintiffs home, and the breakdown of the Mercer County court system, under false pretenses and without warrants or consent when no emergency existed, were arbitrary and unreasonable, without substantial relation to public health, safety or public welfare, and as such violated plaintiffs right to substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution and 42 § 1983.

56. In doing the acts and things complained of above, the defendants were conspirators engaged in a scheme and conspiracy designed, intended to, and which in fact did, deny and deprive plaintiffs of rights guaranteed under the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, and 18 USC §§ 1961 et seq and the Pennsylvania Crimes Code 18 Pa.CS Sec. 911.

57. Specifically, defendants conspired to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the zoning embarrassment of plaintiffs family home. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by the City's retaliatory denial to plaintiffs of a building permit to rebuild the nonconforming structure.

58. The City of Hermitage's unilateral determination of the demolition charges and imposition of a lien against plaintiff Helen Stacey's property for the collection of the

charges injured plaintiff by impairing title to the property. The City's failure to provide plaintiff with a due process hearing prior to the assessment of the charges and the imposition of the lien on her real property to secure the payment of those charges violated the due process requirement of the Fifth and Fourteenth Amendment to the United States Constitution and 42 § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray this Court grant the following relief:

Enter judgment declaring that plaintiff Helen Stacey was entitled to an appeal as of right from the decree nisi issued in her state court case pursuant to Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate Procedure.

Enter an injunction prohibiting the foreclosure of the City's lien on plaintiff's property, ordering the City to remove the lien for demolition charges from all public records.

Enter judgment for the plaintiffs against defendants for compensatory and punitive damages in the amount of $2,000,000.00

Enter an order that defendants pay court costs and attorneys' fees in this action pursuant to 42 § 1988.

Grant such other relief as the Court deems just and proper.

Appendix

Date: November 6, 2002

Respectfully submitted,
s/ Helen Stacey
By s/ Raymond Stacey
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